IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.297 OF 2003

Smt. Triguna Jagjivan Seth ...Applicant
Vs.
The State of Maharashtra ...Respondent

Mr.A.P. Mundargi alongwith Ms Meenaz Merchant i/by H. G. Ganatra for the Applicant.
Mr.R.Y. Mirza, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : AUGUST 22, 2005.

JUDGMENT:

1. The submissions are already heard on the last date. The challenge in this Criminal Revision Application is to the Judgment and Order dated 24th April, 2003 passed by the learned Special Judge. By the said Judgment and Order, the sanction accorded for prosecuting the Petitioner by her employer Sadhana Education Society by letter dated 22nd October, 2001 was held to be legal and valid.

2. The Sadhana Education Society runs several schools. One of the schools is Malti Jayant Dalal High School. The Applicant was at the relevant time Principal of the school. The said school is an aided school. The complainant one Shri. A.K. Choube was employed as a teacher in the said school on contract basis. The case of the prosecution is that the Applicant told the complainant that if he pays a sum of Rs.1 lakh to Education Officer Shri. Chavan, he can be appointed to a permanent post. In February 2001, the Applicant called the complainant and told

the complainant that he can pay Rs.75,000/-. According to the complainant the Applicant called him with a sum of Rs.75,000/- on 01st March, 2001 at 06.00 p.m. The complainant borrowed the said amount by taking loan from the market. On the complaint lodged by the complainant, a trap was laid. On the instructions of the Applicant, the Complainant paid sum of Rs.75,000/- in cash to the Education Officer Shri. Chavan. It is the case of the prosecution that the Applicant requested Shri. Chavan to complete the work of the complainant at the earliest as the complainant had borrowed the loan and was required to pay the interest. The amount was paid in a hotel. When all of them came out of hotel, the complainant gave signal and the Applicant and Shri. Chavan were caught.

3. After completing the investigation, papers were forwarded to the State Government for according sanction to prosecute Shri. Chavan. The papers were also sent to the Sadhana Education Society for granting sanction for prosecuting the Applicant. By letter dated 22nd October, 2001 the Chairperson of the Sadhana Education Society communicated that Society has no objection for taking action against the Applicant in accordance with the law.

4. When the matter was taken up for issuing of

process, it was found that the alleged sanction accorded by the Chairperson of the Society to prosecute the Applicant was not in clear terms. As there was a possibility that the concerned persons may not be conversent in provision of law, a direction was given to refer the matter to Sadhana Education Society. A format of sanction used by furnished to the said Society. In response, the Sadhana Education Society came out with communication dated 10th October, 2002 maintaining the stand which was taken in earlier communication. Therefore, a question arose whether the sanction was legal and valid and whether it was accorded after due application of mind. Hence, learned Special Judge took up the issue regarding legality of sanction. The evidence of the Sanctioning Authority namely Mrs. Jyoti Trivedi, the Chair person of Sadhana Education Society was recorded. The learned Special Judge by the impugned Order came to the conclusion that the sanction was legal and valid.

5. The learned Counsel appearing for the Applicant submitted that letters dated 10th October, 2002 and 22nd October, 2001 by no stretch of imagination can be construed as sanction for prosecution. He submitted that all that the letters record is the allegation made by the prosecution against the Applicant and no objection of the Society to take legal procedure against the Applicant. He

invited my attention to the evidence of the Chairperson of the Society and stated that there was no application of mind before issuing the said letter. The learned A.P.P. for the State supported the impugned Order and stated that there was conscious application of mind as is reflected from the evidence of the Chairperson and only after conscious application of mind, sanction has been granted. He, therefore, submitted that no interference is called for.

6. Before considering the submissions of the Counsel appearing for the parties, it is necessary to refer to the law laid down by the Apex Court in the decision reported in (1997) 7 Supreme Court Cases 622 (Mansukhlal Vithaldas Chauhan Vs. State of Gujarat). Paragraph Nos.18 and 19 of the said decision reads thus:

> "18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. **The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority.**

> 19. Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, **it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other.** Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution." (Emphasis supplied)

In another decision reported in (2005) 4 Supreme Court Cases 81 (C.S.Krishnamurthy Vs. State of Karnataka) the Apex Court held in paragraph No.9 thereof as under:

> "9. Therefore, the ratio is sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order..."

7. The submissions of the Counsel appearing for the parties will have to be appreciated in the light of the law laid down by the Apex Court. It will be therefore, necessary to refer to the order granting sanction. The order records, in short, the alleged criminal acts on the part of the Appliant. After referring to the allegations against the Applicant, sanction order records thus:

> ". We are not competent to judge the merits of the case. We have earlier asked you take legal procedures as required under the law.
>
> . We again inform you and ask you to take legal procedures as required by the law as stated."

On the plain reading of the alleged order of sanction does not disclose that the sanctioning authority had considered the evidence and other material collected during investigation. It is not reflected from the order that the evidence and other material collected during investigation was placed before the sanctioning authority. Thus, the sanction order does not speak for itself. It was, therefore, permissible to lead evidence to prove that the order of sanction was valid. Accordingly, evidence of the Chairperson has been led by the prosecution. From the evidence of the Chairperson it appears that she had no personal knowledge whether the complainant was a teacher in the

school in question. She has deposed that on 07th February, 2002 the management received letter from Anti-corruption Bureau. Thereafter on 28th August, 2002 another letter was sent by the Anti-corruption Bureau to the Society incorporating observations made by the Trial Court. The Chairperson stated on oath as under:

> ". Xerox copy of letter now shown to me is the same. We did not adopt the draft sent by ACB. We have only taken the history portion in our letter and we have mentioned what decision we have taken. We have informed the ACB that we are not competent to judge the merits of the case. We have earlier asked you to take legal procedure as required under the law. The contents of letter (copy) now shown to me are correct. I am also producing copy of this letter from our record. Both the xerox copies are marked X-2 for identification."

In paragraph No.8 of the cross-examination, Chair person stated as under:

> "8. It is correct to say that decision taken by the Management Counsel is given in last two paragraphs of reply dated 10.10.2002 (The reply dated 10.10.2002 is marked as Exh-12 alongwith copy produced by the witness as the letter is used for the purpose of cross examination). It is correct to say that the first part is taken from the letter of ACB (witness volunteers). The first part giving the facts of the case is mentioned in the letter. The other part we have not taken and then we have given our decision for the following paragraphs. **It is correct to say that we have not taken decision on the merits of the matter. (Witness volunteers) We are not competent to take decision on the**

merits of the case."(Emphasis supplied)

Thus, the Chairperson admitted that the Managing Committee has not taken decision of merits of the matter. The Chairperson stated that Managing Committee was not competant to take decision. The evidence of the Chairperson does not disclose that the material collected during the course of investigation was placed before the authority granting sanction. While answering the court questions the Chair person stated that only synopsis of facts was considered and decision was taken that Society has no objection against taking action against the Applicant. The evidence of the Chairperson does indicate that there is no application of mind by the sanctioning authority. Even the material collected during the course of investigation was not considered by the sanctioning authority. It is very obvious from the said evidence that sanctioning authority has not applied its independent mind for generation of satisfaction whether the prosecution has to be sanctioned or not. It appears that the matter was placed for re-consideration before the Managing Committee only because direction was given by the Trial Judge. Infact, on plain reading of the order, it does not appear that the sanctioning authority on merits intended to grant sanction.

8. On the plain reading of the oral evidence of the Chairperson and the so called order of sanction, it is obvious that the alleged sanction granted by letter dated 22nd October, 2001 or by letter dated 10th October, 2002 cannot be said to be a legal and valid sanction. Hence, the impugned order deserves to be quashed and set aside by holding that alleged sanction is not legal and valid.

9. Accordingly, the impugned order is quashed and set aside. It is declared that the alleged sanction by the letter dated 22nd October, 2001 is not legal and valid. The learned Special Judge will pass appropriate and consequential order taking into consideration the fact that the sanction order is not valid and legal.

JUDGE